

No. 14/13/87-6Lab./365.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s Capital Gases Pvt. Ltd., *versus* Ramakant.

BEFORE SHRI N. L. PRUTHI PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Reference No. 199 of 91

In the matter of Industrial Dispute

between

**SHRI RAMAKANT, C/O H. M. F., PARVESH MARG, RAILWAY ROAD,
FARIDABAD**

.. Workman

and

**M/S CAPITAL GASES PVT. LTD., 14/5, MATHURA ROAD,
FARIDABAD**

.. Management.

Present :

Shri S. K. Bakshi, Authorised Representative, for the workman.

Management, *Ex parte*.

AWARD

Under the provisions of section 10 (1) (c) of Industrial Disputes Act, 1947, the Government of Haryana have,—*vide* Endorsement No. OV/FD/23443—48, dated the 1st July, 1991 referred the following dispute between the parties above mentioned for adjudication :—

Whether termination of services of Shri. Ramakant, is legal and justified. If not, to what relief he is entitled ?

2. The case of the workman is that he had been in the employment of the management since 19th May, 1983 and his last drawn wages were Rs. 800 p.m. His service record had remained unbroken but despite that his services were terminated on 19th February, 1991 without any reason and without paying him notice pay, earned wages and service compensation. It is on these facts that the workman has claimed reinstatement with continuity of service and full back wages.

3. In the written statement filed by the management, stand taken is that the workman was appointed as Helper in March, 1988 and his last drawn monthly wages were Rs. 700. According to management, it was registered with the Registrar of Companies at No. H-27636 of 1987-88 and, therefore, the question of appointment of the workman on 19th May, 1983 does not arise. The contention of the Management further is that the workman used to run a tea stall and would, therefore, come to attend to his duties at his own will and was a habitual absentee. According to the management, the workman had remained absent from 22nd November, 1990 to 19th February, 1991 and filed a demand notice on 3rd January, 1991 on which a settlement u/s 12 (3) of Industrial Disputes Act was arrived at on 23rd January, 1991 before the conciliation officer. As per terms of settlement, the workman was to report for duty on 24th January, 1991, but he had failed to do so. An information to that effect was given to the workman as also to the Labour Department. The workman had, however, joined duty on 14th February, 1991 and worked up to 18th February, 1991. He had again absented himself from duty from 19th February, 1991 onwards and never turned up. So, when the workman himself left the job there does not arise the question of his reinstatement.

4. In the rejoinder, the plea taken in the claim statement have been reiterated while those in the written statement controverted.

5. On the pleadings of the parties, following issue was framed on 8th October, 1992 :—

(1) As per reference.

6. After examining one witness on 28th March, 1994, the management chose to withdraw itself from the proceedings and was thus, proceeded *ex parte* on 29th July, 1994. The workman was thereafter called upon to lead his evidence.

7. I have heard authorised representative for the workman and perused facts on record. My findings on the sole issue framed in this case with reasons therefor are as under :—

Issue No. 1:

8. Workman Ramakant examined as WW-1, reiterated all the facts as are contained in the demand notice and the claim statement. The witness of the management namely Anand Parkash examined as MW-1 was not in a position to tell the exact date of appointment of the workman, the date on which the workman had left service and whether the workman had joined service of the management in the year, 1983. He was also not able to tell as to for what reason his services were terminated and whether he was given any compensation at the time of his termination. The statement made by MW-1 rather supports the pleas raised by the workman and proved by him in his examination as WW-1. Therefore, for this reason, I hold that the action of the management to terminate the services of the workman was neither legal nor justified. He is thus, entitled to be reinstated with continuity of service and full back wages. An award is passed accordingly.

The 13th February, 1995.

N. L. PRUTHI,

Presiding Officer,

Industrial Tribunal-cum-Labour Court-I,
Faridabad.

Endorsement No. 385, dated the 20th February, 1995.

A copy, with three spare copies, is forwarded to the Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

N. L. PRUTHI,

Presiding Officer,

Industrial Tribunal-cum-Labour Court I,
Faridabad.

The 20th March, 1995

No. 14/13/87-6Lab./395.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s Perry Sons Cycle (P.) Ltd., Faridabad *versus* Sheela Nath.

BEFORE SHRI N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDADAD

Reference No. 227/91

In the matter of Industrial Dispute

between

SHRI SHEELA NATH, C/O F. K. UNION (REGD). 2/7, GOPI COLONY,
OLD FARIDABAD ... *Claimant*

and

M/S PERRY SONS CYCLE (PVT). LTD., 1/45, D.L.F. AREA,
FARIDABAD ... *Management.*

Present:

Shri S. K. Bikshi Protty, Authorised Representative for Shri S. K. Chauhan, for workman.

Shri M. L. Sharma, Authorised Representative for the Management,

AWARD

Under the provisions of Section 10(1)(c) of Industrial Disputes Act, 1947, the Government of Haryana have,—vide Endst. No. 8224—29, dated 23rd February, 1987, referred the following dispute, between the parties above named for adjudication :

Whether the termination of services of Smt. Sheela Nath is legal and justified. If not, to what relief she is entitled ?

2. The parties have settled the matter between themselves. By virtue of the same, the workman was paid an amount of Rs. 8,000 by means of cheque dated 25th January, 1995 drawn on Bank of Baroda, Defence Colony, New Delhi. Ex. S-1 is the application dated 7th February, 1995 which the workman had given to the Management about the receipt of cheque and that he was withdrawing his claim. The factum of cheque and payment of full and final dues has not been denied. In view of this no more dispute now survives and a 'No Claim Award' is passed.

The 17th February, 1995.

N. L. PRUTHI,

Presiding Officer,

Industrial Tribunal-cum-
Labour Court-I, Faridabad.

Endorsement No. 441, dated the 17th February, 1995.

A copy, with three spare copies, is forwarded, to the Commissioner and Secretary to Government of Haryana, Labour Department, Chandigarh.

N. L. PRUTHI,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court-I, Faridabad.

The 20th February, 1995.

No. 14/13/87-6Lab./397.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No.XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s. Jalani (Gedore) Tools India (P) Ltd., Faridabad, versus Rambir Singh.

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 241/89

between

THE MANAGEMENT OF M/S JALANI (GEDORE) TOOLS INDIA (P) LTD.,
UNIT NO. 2, 4 INUSTRIAL AREA, FARIDABAD, .. Management

versus

THE WORKMAN NAMELY SHRI RAMBIR SINGH, C/O HARYANA
MAZDOOR FEDERATION (REGD.) PARVESH MARG RAILWAY
ROAD, FARIDABAD .. Workman

Present :

Smt. Savita Bhandari, for the workman.

Shri K. D. Singh, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section(i) of section 10 of the Industrial Disputes Act 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above to this court for adjudication,—*vide* Haryana Government Endorsement No. 24346—51, dated the 8th June, 1989 :—

Whether the services of Shri Rambir Singh, were terminated or he had lost lien on the job himself having remained absent from duty. The relief, to which is he entitled as result thereof ?

2. Notices were sent to both the parties and they appeared and submitted pleadings. Issues were framed. Both the parties have led evidence.

3. At the aforesaid stage, the parties have amicably settled the dispute. The statements of the parties recorded. The management has agreed to take back the workman on duty. The management has also agreed to pay 50% of the back wages amounting to Rs. 46,495 in three monthly instalments. The dispute referred for adjudication thus, does not survive. The award is passed accordingly.

The 20th February, 1995.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 217, dated the 25th February, 1995.

A copy, with three spare copies, is forwarded to the Financial Commissioner and Secretary to the Government Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

The 28th February, 1995.

No. 14/13/87-6Lab./399—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Indographic Art Machinery Co. Pvt. Ltd., 22, Mathura Road, Ballabgarh *versus* Bijender Parasari.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD

Reference No. 691/93

between

THE MANAGEMENT OF M/S. INDOGRAPHIC ART MACHINERY CO. PVT. LTD., 22,
MATHURA ROAD, BALLABGARH.

versus

THE WORKMAN NAMELY, SHRI BIJENDER PARASARI VILLAGE AKNARPUR DAKORA,
POST OFFICE CHHAJJU NAGAR, TEHSIL PALWAL, DISTRICT FARIDABAD.

Present :

workman in person.

Shri Y. Khan, for the management.

AWARD

In exercise of the powers conferred by sub-clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endorsement No. 33395—400, dated 3rd September, 1993 :—

Whether the services of Shri Bijender Parasar were terminated or he had left the service himself by tendering resignation ? The relief, to which is he entitled to as result thereof ?

2. Notice were sent to both the parties and they appeared and submitted pleadings.

3. At the aforesaid stage, the parties have settled the dispute. The workman has been paid a sum of Rs. 8,332.45 through cheque, dated 20th February, 1995 as full and final settlement of his dues. The workman has relinquished his right for his reinstatement. In view of this settlement, the dispute referred by the Government does not survive for adjudication. The award is passed accordingly.

U. B. KHANDUJA,

The 21st February, 1995.

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 223, dated 28th February, 1995.

A copy, with three spare copies is forwarded to the Financial Commissioner and Secretary to the Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

The 7th March, 1995

No. 14/13/87-6Lab./304.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Escorts, J. C. B. Mathura Road, Faridabad *versus* Chatter Singh;—

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 19/91

between

M/S ESCORTS, J. C. B. MATHURA ROAD, FARIDABAD

... Management

versus

SHRI CHATTER SINGH, S/O SHRI HARGOBIND, VILLAGE MARROLI, TEHSIL PALWAL,
DISTRICT FARIDABAD

... Workman.

Present :

Shri B. S. Yadav, for the workman.

Shri A. S. Chadha, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-Section (i) of section 10 of the Industrial Disputes Act, 1947 (herein after referred to 'as the Act), the Governor of Haryana referred the following

dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endorsement No. 1804-9, dated 11th January 1991 :—

Whether the termination of services of Shri Chatter Singh is legal & justified? If not, to what relief, is he entitled to?

2. The case of the workman is that he had been working as Gardener with the management continuously for a period of 5 years. On 25th May, 1990 the management stopped him at the factory gate without any reason or prior notice. He is thus entitled to be reinstated into service with continuity in service and full back wages.

3. The management submitted written statement stating therein that the workman had been working as Gardener purely on casual basis as per additional requirement and had worked for intermittent periods in the year 1989 for a total period of 163 days and for 41 days during the year 1990, as per details given in annexure 'A'. He had not worked at all during the year 1987- or 1988. He was paid all of his dues on the expiry of each term. No permanent post exists against which he can be given employment. He is thus, not entitled the relief claimed by him.

4. The workman submitted rejoinder dated 25th November, 1991 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed :—

1. Whether the reference is bad in law?
2. Whether the termination of services of Shri Chatter Singh is legal and justified? If not, to what relief, is he entitled to ? (As per terms of reference).

6. Both the parties have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

Issues No. 1 & 2 :

8. The management has examined one witness MW-1 Bhim sen Batra and he confirmed the position mentioned in the written statement. He also placed on record copies of appointment letters Ex. M-1 to Ex. M-6, copies of attendance register Ex. M-7 to Ex. M-17 and copies of wages register Ex. M-18 to Ex. M-28.

9. On the other hand, the workman examined himself and two other witnesses. The workman himself deposed the facts mentioned in the demand notice and also tendered in evidence, copies of ESI slips Ex. W-1 to Ex. W-3. WW-2 Dinesh Arora deposed that the workman had been in the employment of the management during the period from 11th June, 1986 to 9th August, 1986, 11th August, 1986 to 3rd October, 1986, 14th October, 1986 to 11th November, 1986 for a period of 115 days as causal employee. He also stated that the workman had not worked during the year 1987- and 1988. WW-3 Sheel Kumar, an employee of ESI deposed that the workman was allotted ESI No. 6133448 on 6th March, 1990.

10. On the basis of aforesaid evidence, it has been submitted on behalf of the management that it stands proved that the workman had been working as causal Gardener as per necessity. He had not worked for a continuous period of 240 days during 12 calander months preceding the date of termination of his services. It also stands proved that the workman had been paid his dues at the time of his termination of his services. The reference made by the Government is thus, bad and the workman is not, entitled to any relief.

11. In reply, it has been submitted on behalf of the workman that it is established from the statement of WW-2 Dinesh Arora who produced the record of the management that the workman had been in the employment of the management for considerable period during the year 1986. This fact was denied by the management in the written statement as well as in the evidence. It is thus, cleared that the management suppressed the material record for the court. The version of an innocent and illiterate workman that he had been working for a period of 5 years be thus accepted by drawing an adverse inference against the management. If has also been pointed out that the *mala fide* intention of management stands proved that the management intentionally gave one or two days break in service of the workman in the year 1989 and also did not pay him wages for Sundays & holidays. In case Sundays and other holidays are counted then it is clear that the workman had worked for a ex-period of 210 days during the period from 14th February, 1989 to 22nd September, 1989. Keeping in view this position, the workman is entitled to be reinstated into service. To support this contention, a reference has been made to the decision in the case of the Kapurthala

Central Co-operative Bank Ltd. *versus* the Presiding Officer, Labour Court, Jullunder & others 1984 LAB. I.C. 974 in which a division bench of our own Hon'ble High Court approved the reinstatement of a workman whose services were terminated by the management after he had rendered service for a period of 230 days on the ground that the management has terminated the services when the workman was on the verge of completing 240 days service. That the action of the employer amounted to unfair labour practice.

12. It is not disputed that the workman had not rendered service for a continuous period of 240 days in 12 calander months preceding the date of termination services. MW-1 Bhim Sen Batra clearly stated that the management was having three permanent Gardeners and they used to employe causal guarders whenever there was necessity to have the surrounding bushes cleared or proper clearness was needed on the visit of a dignitary. This position also finds support from the fact that at every stage of fresh appointment the workman was issued fresh ESI card. The workman himself has placed on record the ESI cards Ex. W-1 to Ex. W-3 and the date mentioned in these cards are the same of which the workman was given fresh appointment. The law laid down in the case of Kapurthala Central Co-operative Bank Ltd., Kapurthala *versus* Presiding Officer, Labour Court, Jullunder and others 1984 LAB. I.C. 974 can not be supplied on the facts on the instance case as there is no evidence to prove from the side of the workman that the work existed even on the date of termination of his services. There is also no evidence to the effect that any body else was appointed in place of the workman after the termination his services. It can not be thus, taken that the services of the workman were terminated to avoid that the workman may not complete 240 days service. It is also clear from the position discussed above, that the management has been giving a chance to the workman serve under them as per job requirement even after six months. This observation is made on the ground that the workman was given fresh appointment on 6th March, 1990 after the termination of his services on 23rd September, 1989.

10. For the reasons recorded above, it is held that the termination of services of the workman by the management is legal and justified. Consequently, the workman is not entitled to any relief. The award is passed accordingly.

U. B. KHANDUA,

The 1st February, 1995.

Presiding Officer,
Labour Court-II, Faridabad.

Endorsement No. 199, dated the 3rd February, 1995.

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to the Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUA,

Presiding Officer,
Labour Court-II, Faridabad.

The 13th March, 1995

No. 14/13/87-6Lab./310.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workmen and the management of M/s Chairman/Secretary Board of School Education, Haryana, Bhiwani *versus* Nafe Singh :—

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 330 of 90

Date of receipt : 20-3-90.
Date of decision : 3-2-92.

SHRI NAFE SINGH, S/O MANSA RAM., VPO BAWANI KHERA,
DISTRICT BHIIWANI

... Applicant.

versus

CHAIRMAN/SECRETARY, BOARD OF SCHOOL EDUCATION, HARYANA,
BHIWANI.

... Respondent-Management.

Present :

Shri P. R. Hans, for the workmen.

Shri D. S. Pawar, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short 'the Act'), the Governor of Haryana referred the following dispute between Nafe Singh and the above mentioned management, for adjudication to this Court,—*vide* Labour Department letter No. Bwn./203—89/9924—29, dated the 7th March, 1990:—

Whether termination of services of Nafe Singh is justified and in order ? If not, to what relief is he entitled ?

2. According to the workman, he was appointed as Electrician/Helper in the Education Board, Bhiwani on 3rd August, 1988 on a monthly salary of Rs. 540 per month. He further stated that he worked up to 31st March, 1989 continuously, when his services were terminated unlawfully and against the provisions of natural justice. He also alleged that after terminating his services, one Ved Parkash was appointed on his post. He prayed for reinstatement, with full back wages and other consequential benefits.

3. The management, in its written statement, pleaded that the petitioner was appointed on 3rd August, 1988 on daily wages and that his services were dispensed with on 25th March, 1989. It was further alleged that the petitioner had completed only 235 days service and that he has not completed 240 days of service. It was also claimed that the petitioner was engaged on the post of Electrician-Helper and he was not entitled to any relief as he has not completed 240 days service. Several preliminary objections were also raised, as they are reflected in the following issues framed on 26th July, 1991 by my learned predecessor :—

- (1) As per terms of reference.
- (2) Whether the claim petition is against law and barred by time ?
- (3) Whether the petitioner has no *locus standi* ?
- (4) Whether the petitioner has no cause of action ?
- (5) Whether the petitioner is estopped from filing the claim ?
- (6) Relief.

4. The parties led evidence in support of their rival claims. I have heard Shri P. R. Hans, A. R. of the workman and Shri D. S. Pawar, A. R. of the management and have gone through the case file carefully. My findings on the above issues are as under :

Issue No. 1 :

5. Nafe Singh appeared as WW-1 and has stated that he was appointed on 3rd August, 1988 as Electrician Helper and had worked upto 31st March, 1989 continuously, when his services were terminated by the management, without giving him any notice and without paying him any retrenchment compensation. He also stated that Ved Parkash and Ramesh Kumar were appointed after terminating his services. He tendered copy of attendance register as Ex. W 1.

6. Mahender Singh, Assistant was examined as MW-1 and he stated that the petitioner was appointed on 3rd August, 1988 and his services were terminated on 25th March, 1989 according to the terms of his appointment letter. He also adduced in evidence documents Ex. M-1 to Ex. M-3. He admitted in his cross-examination that no notice was given to the workman and that Ved Parkash and Ramesh Kumar were appointed as labourers.

7. It is admitted case that the petitioner had worked for 235 days during the period from 3rd August, 1988 to 25th March, 1989 and it is also established that Ved Parkash and Ramesh Kumar were appointed after the termination of services of the workman. It was also not the case of the management that the work with the management was accomplished on 25th March, 1989 and thereafter there was no work with them. Keeping in view the circumstances of the case, I am of the view the action of the management in preventing the workman from attending to his duties with effect from 26th March, 1989 was an "unfair labour practice" and on this account, the retrenchment of the workman is illegal. In this connection, I place reliance on the Division Bench authority of KAPURTHALA CENTRAL COOP. BANK LTD., KAPURTHALA vs PRESIDING OFFICER, LABOUR COURT, JALANDHAR & OTHERS 1984-I, LAB. J.C. 974 and subsequent authorities of FEROZEPUR CENTRAL COOP. BANK LTD. vs LABOUR COURT BHATINDA, FJR (VOL 67) 367 and GURDASPUR CENTRAL COOP. BANK LTD. vs PRESIDING OFFICER, LABOUR COURT,

GURDASPUR & OTHERS, 1991 (I) RSJ-76. In the authority of KAPURTHALA CENTRAL COOPERATIVE BANK LTD. vs PRESIDING OFFICER, LABOUR COURT, JALANDHAR (SUPRA), the workman had completed 230 days job, while in the authority of FEROZEPUR CENTRAL COOP BANK LTD. vs LABOUR COURT, BHATINDA (SUPRA), the workman had put in 232 days in service. On the strength of these two authorities it can be said without any hesitation that the termination of services of the workman amounted to "unfair labour practice" and the same was illegal. The workman is, thus, entitled to reinstatement with full back wages and other consequential benefits. The issue is answered accordingly, in favour of the workman.

Issues No. 2, 3, 4 and 5 :

8. All these issues were not pressed by the A. R. of the management and were conceded to by him during arguments. All these issues are, thus, answered against the management.

Issue No. 6—Relief.

9. In view of my findings on the above issues, the termination of services of the petitioner is held illegal. The same is hereby set aside. The petitioner is reinstated in the same post forthwith, with full back wages and benefit of continuity of service and other consequential benefits. The reference is answered accordingly, with no order as to costs.

B. R. VOHRA,

The 3rd February, 1995.

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endorsement No. 130, dated 6th February, 1995.

A copy, with two spare copies, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

No. 14/13/87-6Lab./311.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s Rori Coop. Credit and Service Society Ltd., Rori, District Sirsa, versus Basant Singh.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, HISAR.

Reference No. 383 of 1990

Date of receipt: 20-3-90

Date of decision: 5-1-95

SHRI BASANT SINGH, S/O LAL SINGH, VILLAGE MALLRI,
TEH. AND DISTRICT SIRSA

Applicant

versus

M/S RORI COOP. CREDIT AND SERVICE SOCIETY
LTD., RORI, DISTRICT SIRSA

Respondent-Management

Present :

Shri V. K. Bansal, for the workman.

Shri S. S. Guel, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute, between Basant Singh and the above mentioned management for adjudication to this Court.—*vide Labour Department letter No. Hsr/33-90/11101—6, dated 14th March, 1990* :—

Whether termination of services of Shri Basant Singh is justified and in order? If not, to what relief is he entitled?

2. According to the workman, he was appointed as Salesman by the management on 17th August, 1984. Subsequently on 1st June, 1988, he was made a clerk and he worked as such upto 30th June, 1989. One Makhan Singh was appointed as Salesman in his place with effect from 1st June 1988. It was alleged that the services of the workman were terminated verbally on 30th June 1989 and according to him, this termination was illegal, null and void being violative of Section 25-F and 25-G of the Act and it was claimed that Makhan Singh, who was junior to him, had been retained in service. He, therefore, prayed for reinstatement with full back wages and other consequential benefits.

3. The management, in its written statement, admitted that the workman was appointed as Salesman initially and was appointed as a clerk on 1st June 1988, when Makhan Singh, was appointed as a salesmen. It was stated that the services of Basant Singh workman terminated with effect from 1st July 1989 as per the directions of Sirsa Central Coop. Bank Ltd. Sirsa, whereby excess staff beyond what was prescribed by the Loan Manual, was ordered to be retrenched. The management further stated that the services of the workman were terminated due to misconduct, absence from duty and loss of confidence. Several preliminary objections were also raised, as they are reflected in the following issues framed on 11th June 1991 by my learned predecessor :—

- (1) As per terms of reference.
- (2) Whether the claim petition is not maintainable in the present form?
- (3) Whether the claim petition is bad for non-joinder mis-joinder of the parties?
- (4) Whether the respondent management is not industry?
- (5) Relief.

4. The parties led evidence in support of their rival claims. I have heard Shri V. K. Bansal, A. R. of the workman and Shri S. S. Goel, A. R. of the management and have gone through the case file carefully. My findings on the above issues are as under :—

Issue No. 1 :

5. The facts are not much in dispute. It is admitted case that Basant Singh was appointed as salesman in the Society on 17th August 1984,—*vide resolution*, a copy of which is Ex. M-1 and it is also not in dispute that subsequently, the workman was appointed as clerk *vide resolution*, a copy of which is Ex. M-2 and that in his place, one Makhan Singh was appointed as Salesmen against the the vacancy caused by the appointment of Basant Singh as clerk. It is also not in dispute that services of workman were terminated by the management *vide resolution*, a copy of which is Ex. M-4 and though the workman claims that his services were terminated with effect from 1st July 1989, the contention of the management is that his services were terminated with effect from 1st August 1989.

6. The main thrust of the management is that in consequence of the instructions issued by the Sirsa Central Coop. Bank Ltd., Sirsa, contained in Ex. M-3, the post of clerk stood abolished as there was no provision of the post of clerk under Loan Manual and it was because of the abolition of the post that the services of the workman as clerk were dispensed with with effect from 1st August 1989,—*vide resolution*, a copy of which is Ex. M-4. It is to be noted that no replication was filed by the workman controverting this plea of the management, contained in the written statement, and in this way it is not the contention of the workman that post of clerk was not abolished. The workman has also not uttered a word to any that any other person was appointed as clerk, in his place. Since the post of clerk on which Basant Singh was working on 31st July 1989, stood abolished the management was justified in removing him from the said post of clerk, but since the workman was previously working as Salesman under the management, the management was duty bound to post him in the lower post of salesman and it was the duty of the management to terminate the services of Makhan Singh, who was appointed on 1st June 1988, consequent upon the appointment of Basant Singh as clerk and to this extent the order passed by the management is patently illegal, because that management had not followed the principle of "last come, first go" and has, thus violated the provisions of Section 25-C of the Act.

7. In the light of discussion above, I hold that the management has illegally terminated the services of the workman on 1st August 1989. On the other hand, he ought to have been appointed as salesman, which post he was holding earlier, prior to his appointment as clerk and to this extent the order contained in Ex. M-4, is illegal and unjustified. The workman shall be deemed to be in service of the society as salesman with effect from 1st August 1989 and he will be entitled to wages of the post of salesman with consequential benefits with effect from 1st August, 1989. This issue is, therefore, decided in favour of the workman.

Issues No. 2, 3 & 4 :

8. All these issues were not pressed by the A. R. of the management and were conceded to by him during arguments. All these issues are, therefore, decided against the management.

Issue No. 5 Relief.

9. In view of my findings on the above issues, the termination of services of the workman is held as illegal. The same is hereby set-aside. The petitioner is reinstated forthwith, on the post of Salesman, with full back wages of salesman with effect from 1st August 1989 and benefit of continuity of service and other consequential benefits. The reference is answered accordingly, with no order as to costs.

Dated 5th January, 1995.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endorsement No. dated

A copy, with two spare copies, is forwarded to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

The 7th March, 1995

No. 14/13/87-6Lab./286.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of Executive Engineer, PWD (PH), Jind *versus* Shri Ishwar Singh :—

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 260 of 1994

between

WORKMAN SHRI ISHWAR SINGH, S/O RICHPAL, VILL. & P. O. NIDANA, DISTT. JIND,

and

**THE MANAGEMENT OF EXECUTIVE ENGINEER, P. W. D., PUBLIC HEALTH,
DIVISION, JIND.**

Present :

Shri Chstan Anand, Authorised Representative, for the workman.

Shri S. C. Verma, A.D.A., for the management.

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 the Governor of Haryana has referred the following dispute, b/wen the parties, named above, to this Court for adjudication,—vide Labour Department Endorsement No. OV/Bhiwani/9/92/9316—21, dated 19th February, 1992 :—

Whether the termination of services of Shri Ishwar Singh, is justified and in Order? If not, to what relief is he entitled?

2. The workman and the management were summoned. The workman appeared and filed the claim statement he was appointed as Beldar by the respondent in the month of July, 1990. The work and conduct of the applicant remained satisfactory. In the month of May, 1991 the applicant filed civil writ petition in the High Court of Punjab & Haryana High Court for the relief of regularising the service of workman. The workman was directed to make a representation before the respondent upto 15th May, 1991. The workman made representation to the respondents but the same was rejected without assigning any reasons and he was not allowed to join his duty on 1st June, 1991 and his name was struck off from the Muster Roll. The respondent have adopted the policy of pick and choose at their whims and fancies and the workman has been victimised due to filing of civil writ petition. The respondents have let the formula of Last come First go as some junior to the workman in service at the time of alleged termination, as such respondents hve violated the provisions of Section 25-F of the Industrial Disputes Act. This type of termination amounts to oral termination and retrenchment, but no notice pay or any retrenchment compensation was never paid or offered to the workman at the of termination, so the respondent have violated the provisions of Section 25-F of the Industrial Disputes Act, 1947. Hence this claim statement was filed for acceptance of it in favour of the workman by reinstatement on duty with full back wages and other benefits.

3. The respondent appeared and filed the written statement that the applicant has no cause of action; the Court has no jurisdiction to entertain the present application the applicant was employed on daily wages in the month of July, 1990 and it is wrong to allege that his work and conduct remained satisfactory rather it was not upto the mark. The applicant had filed the civil writ petition, his representation considered and said representation was rejected. It is wrong to allege that the applicant was not allowed to join rather he had left the job. The provisions of the I.D. Act, 1947 are not applicable to the department of Haryana Public Works and therefore, no violation of provisions of Section 25-F was made by the respondent and there was no reason to comply with the provision of Section 25-G of the I.D. Act and hence the claim statement may be dismissed with costs.

4. The replication was filed by the workman. On the pleadings of the parties, the following issues were framed :—

- (1) As per terms of reference ?
- (2) Whether the petitioner has no cause of action ?
- (3) Whether this court has no jurisdiction ?
- (4) Relief ?

5. My findings on the above issue with reasons thereof are as under :—

Issue No. 1 :

6. The workman has come into witness box as WW-1 and closed the evidence. The management has examined Shri Ishwar Jain, S.D.O. as MW-1 and closed the evidence.

7. Shri Ishwar Jain as M.W-1 has admitted that the applicant started working on the said post w.e.f. 3rd July, 1990 and he worked from July, 1990 to May, 1991 i.e. for 267 days and the applicant was never given any notice pay or retrenchment compensation. He admitted that Ex. WX is the detail of the work done by the applicant. From the statement of WW-1 admitting that the workman had worked for about 267 day and the applicant also made the statement that he had worked for more than 240 days in 12 months. As the applicant was not served the notice or not paid notice pay or retrenchment compensation and hence the management has not complied with Section 25-F and G of the I.D. Act. At the respondent had not terminated the service of the junior person to the applicant who were Kailash Singh and Gulab Singh. For the facts proved the reference was made to The Kuruksetra Central Co-op. Bank Ltd., Kurukshetra versus State of Haryana and others cited in 1993 1 RSJ, 763, holding that when the management

allows the workman to continue in service with notional breakes after the workman had put in 240 days in service in 12 months. Amounts to unfair labour practice if his services are terminated. The reference was also made to Ramesh Pal versus The State of Haryana (D.B.), cited in 1992 (2) Service Cases Today, 636 (P & H) holding that function of Public Health Department being to supply water to rural as well as urban area would bring the department under the definition of industry. Industry does not contemplate that any charges were to be levied for rendering services of distributing water. Petitioner had completed more than 240 days in service. His removal without following the procedure laid down under the Act is not permissible. Petition is entitled to reinstatement with back wages.

8. When it is proved that the workman has worked for more than 240 days of service in 12 calendar months and his services were not brought to an end as required by Section 25-F of the I. D. Act, it can be said hold that his retrenchment has taken place not of due procedure of law and hold it so. This issue is decided in favour of the workman.

Issue No. 2 & 3 :

9. Both these issues are not pressed and argued hence, I decide both these issues against the management.

Issue No. 4 (Relief) :—

10. In view of my findings on the above issues, I accept the claim statement and hold that the workman is entitled to be on the job with continuity of services but with 50% of back wages. The reference is answered and returned accordingly. The parties are left to bear their own costs.

P. L. KHANDUJA,

The 18th January, 1995.

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. ref. 260-94/136, dated the 19th January, 1995.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Department, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

P. R. KAUSHIK,

Financial Commissioner and Secretary to Government, Haryana,
Labour and Employment Department.